

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SOPC HOLDINGS WEST LLC,)	
the Tax Matters Partner of)	
EQUILON ENTERPRISES LLC,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION No. 4:18-cv-00374
)	
UNITED STATES OF AMERICA,)	Consolidated with: 4:18-cv-00376
)	4:18-cv-00377
Defendant.)	4:18-cv-00378

PLAINTIFF'S AGREED MOTION TO STAY PROCEEDINGS

Plaintiff, SOPC Holdings West LLC (“SOPC Holdings”), respectfully moves to stay all proceedings in this case, including all pre-trial and dispositive motion deadlines, pending the final determinations of *Sunoco, Inc. v. United States*, 129 Fed. Cl. 322 (2016), U.S. Court of Appeals for the Federal Circuit, Appeal No. 2017-42, and *Exxon Mobil Corp. v. United States*, Civil Action No. 3:16-cv-2921, U.S. District Court Northern District of Texas, Dallas Division.

1. This case should be stayed, because a final determination of *Sunoco* and *Exxon*, while not binding on the parties here, will be determinative to SOPC Holdings as to how or whether it intends to proceed with this litigation. Both *Sunoco* and *Exxon* involve substantially similar issues as in this case with respect to the proper application of I.R.C. §§ 4081 and 6426.

2. With respect to *Sunoco*, the U.S. Court of Appeals for the Federal Circuit issued its opinion in favor of the United States on November 1, 2018, and, on December 17, 2018, Sunoco filed its motion for rehearing and rehearing en banc.

3. With respect to *Exxon*, the U.S. District Court for the Northern District of Texas denied Exxon’s motion for partial summary judgment and granted the United States’s cross-

motion for partial summary judgment with respect to the proper application of I.R.C. §§ 4081 and 6426 on August 8, 2018. Exxon's motion for interlocutory appeal to the U.S. Court of Appeals for the Fifth Circuit is currently pending before the court. Should the *Exxon* case be presented to the Fifth Circuit, on an interlocutory appeal or otherwise, a decision by the Court of Appeals on the issue in dispute here will be determinative.

4. "In determining whether a stay is appropriate pending the resolution of another case, a district court must consider various competing interests including: (1) the potential prejudice to plaintiffs from a brief stay; (2) the hardship to defendants if the stay is denied; and (3) the judicial efficiency . . . which could be expected to result from a stay." *Coker v. Select Energy Servs., LLC* 161 F. Supp. 3d 492, 495 (S.D. TX 2015) (citations omitted).

5. The issuance of a stay in this case will not prejudice either party. Defendant, United States of America, agrees with this motion and will not suffer any undue prejudice from a stay in these proceedings.

6. Further, because the issues in *Sunoco* and *Exxon* are substantially similar to the issues in this case, issuing the stay "will avoid expending unnecessary judicial resources." *Id.* See also *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes of its docket with economy of time and effort for itself, for counsel, and for litigants.").

7. Pursuant to Local Rule 7.2, on December 19, 2018, counsel for SOPC Holdings consulted counsel for Defendant regarding this motion, and, as noted, Defendant agrees with this motion.

WHEREFORE, SOPC Holdings respectfully requests that this Court grant its motion to stay this case and order the parties to report back to this Court within fourteen days of final determinations in *Sunoco* or *Exxon*, whichever case is concluded earliest, to advise the Court how the parties would recommend proceeding.

Respectfully submitted:

Dated: December 21, 2018

s/Thomas V. Linguanti
THOMAS V. LINGUANTI
Attorney-in-Charge
Illinois Bar No. 6244308
Southern District Fed. ID. No. 3159578
MORGAN, LEWIS & BOCKIUS LLP
77 West Wacker Drive, Fifth Floor
Chicago, IL 60601
Tel: (312) 324-1486
Fax: (312) 324-1001
Email: thomas.linguanti@morganlewis.com

Of Counsel:

Jenny A. Austin
MORGAN, LEWIS & BOCKIUS LLP
77 West Wacker Drive, Fifth Floor
Chicago, IL 60601
Tel: (312) 324-1487

John B. Magee
Scott Farmer
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: (202) 373-6229

CERTIFICATE OF CONFERENCE

I certify that I have conferred with counsel for the Defendant, United States of America, and that this motion is agreed.

s/Thomas V. Linguanti
THOMAS V. LINGUANTI